

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL E. JACQUES,
Plaintiff,
v.
C. HEARN,
Defendant.

No. 2:23-cv-02714 SCR P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff, proceeding without counsel while confined at Salinas Valley State Prison, filed this civil rights action concerning events that took place at Mule Creek State Prison. (ECF No. 1.) Plaintiff also filed an in forma pauperis affidavit (“IFP”) in which he stated he was unable to pay the court costs and had not received money from other sources over the last twelve months. (ECF No. 2 at 1.)

On June 13, 2024, the magistrate judge previously assigned to this case denied without prejudice plaintiff’s application to proceed IFP, finding plaintiff had received funds, was able to pay the court costs, and was not entitled to IFP status on the day he signed the IFP affidavit, and constructively filed the complaint because his account contained \$2,297.63. (ECF No. 6 at 2.) Plaintiff was ordered to either submit the appropriate court costs to the Clerk of the Court, or “clarify his financial condition and attempt to demonstrate financial hardship in a renewed IFP

1 application” along with an explanation why the incoming funds were not disclosed on the IFP
2 affidavit. (Id. at 3.)

3 Plaintiff responded to the order dated June 13, 2024. (ECF No. 7.) Reviewing plaintiff’s
4 response, the undersigned determined plaintiff adequately explained why funds were not
5 disclosed but did not make an adequate showing of indigency. (ECF No. 9.) By order served on
6 October 16, 2024, plaintiff was ordered to pay the filing fee and administrative fee within 30 days
7 to proceed with this case. (Id. at 3.) The time granted for this purpose has expired and plaintiff has
8 not paid the court costs or requested more time to do so.

9 In accordance with the above, IT IS ORDERED that the Clerk of Court shall assign a
10 district judge to this case.

11 In addition, IT IS RECOMMENDED as follows:

- 12 1. This action be dismissed for plaintiff’s failure to pay the filing fee.
- 13 2. The Clerk of the Court be directed to close this case.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
16 after being served with these findings and recommendations, plaintiff may file written objections
17 with the court and serve a copy on all parties. Such a document should be captioned “Objections
18 to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the
19 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d
20 1153 (9th Cir. 1991).

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22 Dated: November 22, 2024

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26 SEAN C. RIORDAN
27 UNITED STATES MAGISTRATE JUDGE
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